

# **EXHIBIT D**

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.

-----X 01-12257-PBS

THIS DOCUMENT RELATES TO: )  
United States of America ex )  
rel. Ven-a-Care of the )  
Florida Keys, Inc., et al. )  
v. Boehringer Ingelheim )  
Corp., et al., Civil Action )  
No. 07-10248-PBS )

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(CROSS-CAPTIONS APPEAR ON FOLLOWING PAGE)

VIDEOTAPED 30(b)(6) DEPOSITION OF ROXANE

LABORATORIES, INC., ROXANE LABORATORIES, INC.

n/k/a BOEHRINGER INGELHEIM ROXANE, INC.,

BOEHRINGER INGELHEIM PHARMACEUTICALS, INC., and

BOEHRINGER INGELHEIM CORPORATION by JUDY WATERER

DECEMBER 12, 2008

10 (Pages 34 to 37)

<p style="text-align: right;">34</p> <p>1 the same type of pricing scenario that we do.  2 It's publicly available. It's published. And  3 it's virtually an industry standard on a generic  4 product that the AWP is typically set at 10  5 percent off of the brand's AWP at launch. So I -  6 - I guess someone could set it wherever they  7 want, but I don't know that that happens in the  8 industry.  9 Q. You said that it's the industry  10 standard to set AWP at 10 percent off the brand.  11 Are you referring to the AWP of the brand  12 product?  13 A. Yes, that that is a common formula that  14 we see lots of people -- it's very common to see  15 that when you launch a product, that that's where  16 the pricing ends up.  17 Q. Okay. Is that how Roxane typically  18 sets the AWP for its generic drugs?  19 A. When we launch a new generic drug, our  20 most common thing to do is take 10 percent of the  21 brand's AWP at launch. There are instances when  22 that does not occur.</p>	<p style="text-align: right;">36</p> <p>1 don't limit the scope of my questions. They do  2 limit the effect of the testimony insofar as it  3 may or may not be binding on Roxane --  4 MS. RIVERA: Well, if you --  5 MR. HENDERSON: -- but the topics are  6 not a limitation on the scope of my questioning.  7 MS. RIVERA: If you can link your  8 questioning back to the subject of the topics,  9 then that's okay. But if they go off into topics  10 that are not and don't have any relationship to  11 the topics that are on the notice, then we're not  12 going to go down that path.  13 MR. HENDERSON: Ms. Rivera, the law is  14 crystal clear that I'm entitled to ask any  15 questions I want to seek non-privileged  16 information at this deposition, regardless of  17 whether they are within the scope of the topics.  18 MS. RIVERA: Well, that's not our  19 understanding of the law or the agreement that we  20 had, which is that this is a 30(b)(6) deposition,  21 and so Ms. Waterer is here designated pursuant to  22 specific topics to speak on behalf of the</p>
<p style="text-align: right;">35</p> <p>1 Q. And is that true regardless of where  2 Roxane sets its launch prices at which it sells  3 to customers?  4 MS. RIVERA: Hold on. Hold on. I'm  5 going to object. I mean, how Roxane sets its  6 prices and its practices for setting its prices  7 is not one of the topics that Ms. Waterer is here  8 to talk about. One of your topics is how the  9 industry sets prices for generic drugs and  10 Roxane's understanding of how the industry sets  11 prices. She's testified on numerous occasions  12 how Roxane goes about setting its prices and what  13 its methodologies are for that. So I'll give you  14 a little leeway on some of the basic questions,  15 but I don't want to go down a whole long line of  16 questioning about what Roxane's specific  17 practices are for how they set their prices  18 because it's not part of what we're here to talk  19 about today.  20 MR. HENDERSON: Fair enough. And I'll  21 try to avoid repeating prior questioning. At the  22 same time, I'm not limited by the topics. They</p>	<p style="text-align: right;">37</p> <p>1 company. She has not been noticed in her  2 individual capacity. And you had many years to  3 notice her and take her deposition in her  4 individual capacity and she's not prepared here  5 today to talk about things that are not out --  6 that are outside of the scope of this notice, nor  7 were we given any indication that you would be  8 seeking to obtain testimony on other -- on topics  9 other than what are contained in the notice. So  10 --  11 MR. HENDERSON: We don't have to take  12 up a lot of space on the record for this.  13 MS. RIVERA: I agree.  14 MR. HENDERSON: I can provide you with  15 case law. You are -- you should know the law.  16 MS. RIVERA: I do know the law.  17 MR. HENDERSON: You're a lawyer. And  18 that's the law. We've never waived our rights,  19 and there's no agreement to that effect.  20 BY MR. HENDERSON:  21 Q. Ms. Waterer, you said it's industry  22 practice to set AWP's at 10 percent below the AWP</p>

27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 determine what the AWP is going to be for one of  2 those types of products; again, for the record, a  3 generic product that has many characteristics of  4 a branded product?  5 A. It's typically an AWP of an older  6 product that has a long history of pricing. And  7 whatever the price is, we take all of our list  8 prices up by the same percent.  9 It's common for us to base it on a  10 pharmaceutical price index. We take price  11 increases, quite frankly, so infrequently that we  12 usually don't keep up with that. But we look at  13 what would be a rational price increase, and once  14 we decide what would be rational to increase the  15 price, we increase the price from its existing --  16 from its existing price by that percent.  17 Q. Okay. So Roxane relies in part on the  18 AWP of another product?  19 A. No, on its own product. If we're the  20 only one in the market?  21 Q. Yeah. Maybe I --  22 A. Our AWP is already set. It's been in</p>	<p style="text-align: right;">104</p> <p>1 Q. Which products are those?  2 A. Roxicet.  3 Q. Okay. And how does -- how did AW --  4 how did Roxane set the AWP on Roxicet?  5 A. I believe that -- that that was --  6 first happened so long ago that records don't  7 exist. It's a very, very old product.  8 Q. Okay. It was set before your time?  9 A. Way before, yes.  10 Q. Okay. Trying to come back to the  11 subject of changing or not changing the reported  12 AWP -- actually, let me -- let me back up. I'm  13 going to diverge. I'm sure counsel will object.  14 Is -- is NovaPlus a generic product?  15 I'm sorry. The Ipratropium Bromide NovaPlus  16 product?  17 MS. RIVERA: No, hold on. Hold on.  18 Object. Objection. It's beyond the scope of the  19 deposition notice.  20 Go ahead.  21 BY MR. HENDERSON:  22 Q. You may answer.</p>
<p style="text-align: right;">103</p> <p>1 place for a long time.  2 Q. I see.  3 A. So if we're going to take a price  4 increase, we decide what percent price increase  5 we're taking, and then we increase our prices by  6 that percent on that product.  7 Q. I see. And when the product was  8 originally launched, was -- is the scenario  9 you're describing one where the original AWP was  10 set at 10 percent below the brand?  11 A. It may or may not have been. And I  12 don't -- I don't know that we would be able to  13 track that because the majority of the products  14 that fall into this category date back so far  15 that we don't have records on that anymore.  16 Q. Does Roxane market any branded  17 products?  18 A. Currently?  19 Q. Yeah.  20 A. Again, I'm going to have to say how are  21 you going to define "branded." We market some  22 products that have a brand name.</p>	<p style="text-align: right;">105</p> <p>1 MS. RIVERA: And to form.  2 BY THE WITNESS:  3 A. NovaPlus is a private label.  4 BY MR. HENDERSON:  5 Q. Yeah.  6 A. It's not a -- it's not a specific  7 product.  8 Q. How would you --  9 A. It's -- it's a label.  10 Q. Okay. The product itself, would you  11 characterize it as a generic product?  12 A. What product are you referring to?  13 Q. The Ipratropium Bromide that is sold  14 under the NovaPlus label.  15 A. Okay. Yes.  16 Q. Do you know whether or not -- do you  17 know how or whether --  18 (WHEREUPON, there was a short  19 interruption.)  20 MR. HENDERSON: Let's take a short  21 break so that there's no interruption.  22 THE VIDEOGRAPHER: We are off the</p>

28 (Pages 106 to 109)

<p style="text-align: right;">106</p> <p>1 record at 11:18 a.m.</p> <p>2 (WHEREUPON, a recess was had.)</p> <p>3 THE VIDEOGRAPHER: We are back on the</p> <p>4 record at 11:46 a.m.</p> <p>5 MS. RIVERA: I wanted to make a quick</p> <p>6 statement on the record, which is that Roxane</p> <p>7 objects to questioning of Ms. Waterer in her</p> <p>8 corporate representative capacity outside the</p> <p>9 scope of the topics in the notice, and we will</p> <p>10 put those objections on the record. And to the</p> <p>11 extent that the questioning goes beyond what we</p> <p>12 feel is the appropriate scope of the topics, we</p> <p>13 will instruct the witness not to answer, end the</p> <p>14 deposition if that be necessary.</p> <p>15 In addition, Mr. Henderson is going to</p> <p>16 try to clarify some of this, but there have been</p> <p>17 some questions about Ms. Waterer's personal</p> <p>18 knowledge and whether those questions also apply</p> <p>19 to what the corporate position is on those</p> <p>20 issues. And Roxane's position is to the extent</p> <p>21 Ms. Waterer was questioned in her personal</p> <p>22 knowledge, unless it is clarified in the record</p>	<p style="text-align: right;">108</p> <p>1 California case; and Overseas Private Investment</p> <p>2 Corp. case at 185 FRD 67, page 68. All of these</p> <p>3 courts hold that the topics of a 30(b)(6)</p> <p>4 deposition do not restrict the scope of</p> <p>5 questioning and that the examiner is well within</p> <p>6 his rights in asking questions outside the scope</p> <p>7 of those topics. And if the -- Roxane's counsel</p> <p>8 does instruct the witness not to answer on the</p> <p>9 ground -- on that ground which the United States</p> <p>10 believes to be unfounded, the United States</p> <p>11 certainly reserves its rights and may well seek</p> <p>12 to reconvene the deposition in Boston. And the</p> <p>13 United States may seek costs of associated with</p> <p>14 doing that.</p> <p>15 BY MR. HENDERSON:</p> <p>16 Q. Now, with regard to the questions</p> <p>17 asking about your personal knowledge, Ms.</p> <p>18 Waterer, I think a number of my questions, I</p> <p>19 withdrew my comment about personal knowledge but</p> <p>20 was asking focused questions based on your first-</p> <p>21 hand knowledge. And we were talking about</p> <p>22 industry practice regarding the setting of AWP</p>
<p style="text-align: right;">107</p> <p>1 that those aren't -- that testimony is not</p> <p>2 binding on the corporation, that in the future,</p> <p>3 the questions will be -- should be phrased in</p> <p>4 terms of what Roxane's corporate knowledge is, as</p> <p>5 that's the role that Ms. Waterer is playing</p> <p>6 today.</p> <p>7 MR. HENDERSON: Ms. Rivera's position</p> <p>8 about the scope of the 30(b)(6) questioning is at</p> <p>9 least the third time it has been stated. But in</p> <p>10 any event, I am putting Roxane's counsel on</p> <p>11 notice that the clear majority of courts hold</p> <p>12 that a 30(b)(6) deposition notice and the topics</p> <p>13 therein do not constitute a restriction or</p> <p>14 limitation of the scope of questioning.</p> <p>15 And I've given her citations to cases,</p> <p>16 including the King case at 161 FRD 475 from the</p> <p>17 Southern District of Florida, 1995. There's a</p> <p>18 Cabot Corporation case, 194 FRD 499, Middle</p> <p>19 District of Pennsylvania; United States EEOC</p> <p>20 versus Caesar's Entertainment, 237 FRD 428 at</p> <p>21 432, 2006 case; and Detoy, D-e-t-o-y, versus City</p> <p>22 and County of San Francisco, 196 FRD 362 at 365,</p>	<p style="text-align: right;">109</p> <p>1 and then after that, I asked some questions about</p> <p>2 industry practice regarding any changes to the</p> <p>3 AWP after the time of launch.</p> <p>4 With regard to the first set of</p> <p>5 questions relating to industry practice about the</p> <p>6 setting of the AWP for generic product at the</p> <p>7 time of launch, was there anything in your</p> <p>8 answers that you believe do not reflect the -- or</p> <p>9 are not part of the corporate knowledge of Roxane</p> <p>10 Laboratories?</p> <p>11 A. Without reviewing the questions and the</p> <p>12 answers, I'm not sure how to answer that.</p> <p>13 Q. All right. Is there anything that you</p> <p>14 recall telling me that you believe the</p> <p>15 corporation, Roxane Laboratories, would disagree</p> <p>16 with?</p> <p>17 A. I'm not sure without reviewing what I</p> <p>18 said. My -- I am concerned that during the</p> <p>19 questioning, if the question was clearly preceded</p> <p>20 with you're answering it in your capacity as the</p> <p>21 corporate representative, that the answer to that</p> <p>22 specific question would have been specific as the</p>

29 (Pages 110 to 113)

<p style="text-align: right;">110</p> <p>1 corporate representative, and then the questions  2 where it was immediately preceded with as your  3 personal. But there was a number of times that  4 it switched back and forth, and I am concerned  5 that I might have answered something with a yes,  6 it's my personal or -- something with a clear yes  7 or no from my personal that might not be exactly  8 the same as the corporate's.  9 Q. Is there anything --  10 A. There's nothing that stands out.  11 Q. Okay.  12 A. But I'm uncertain unless I go through  13 and review it because it was flipping back and  14 forth a number of times without, as I recall it,  15 a clear awareness to me of which hat was on.  16 Q. Okay. Some of my questions related to  17 your direct first-hand knowledge of the setting  18 of AWP's for Roxane drugs and your experience in  19 that regard. Is there anything in those answers  20 that you gave that you believe does not reflect  21 the corporate knowledge of Roxane Laboratories  22 that you can think of?</p>	<p style="text-align: right;">112</p> <p>1 instructs you not to answer, so be it.  2 MR. HENDERSON: But I'll put the  3 questions on the record and any instructions as  4 you give will be on the record.  5 BY MR. HENDERSON:  6 Q. Does -- do you have any understanding  7 as to whether or not the -- well, first of all,  8 the NovaPlus product, Ipratropium Bromide product  9 that Dey sells, is that sold to a company called  10 Novation?  11 A. That who sells?  12 Q. Roxane.  13 A. Okay.  14 Q. Did I say something else?  15 MS. RIVERA: You said Dey.  16 MR. HENDERSON: I'm sorry.  17 BY THE WITNESS:  18 A. Roxane no longer sells that product.  19 BY MR. HENDERSON:  20 Q. I see. Approximately how long did it  21 sell the product for?  22 A. Maybe a couple of years. I'm not sure</p>
<p style="text-align: right;">111</p> <p>1 A. I can't think of it. But again, one  2 question was prefaced with, you know, in your  3 personal knowledge. And then 15 questions later,  4 we're still asking questions and I didn't --  5 wasn't clear whether that was still personal  6 knowledge or not. So all I can say is that I'm  7 uncertain.  8 Q. Okay.  9 MS. RIVERA: Bunker, maybe --  10 BY MR. HENDERSON:  11 Q. At this point in time, nothing jumps  12 out at you as -- there is no informa- -- there is  13 no answer that you've given today so far that  14 jumps out at you that you think does not reflect  15 the corporate knowledge. Is that fair to say?  16 A. Yes.  17 Q. Okay. And I understand I had a few  18 questions about the Ipratropium Bromide NovaPlus.  19 Those are outside the scope of the 30(b)(6)  20 notice, and we'll just treat those differently.  21 I'm going to follow-up on a few more  22 questions on NovaPlus. If -- if counsel</p>	<p style="text-align: right;">113</p> <p>1 exactly.  2 Q. Did it start in about 2000 or 2001?  3 A. I don't remember exactly. That doesn't  4 seem unlikely, but I don't know that information.  5 Q. Okay. Do you know that the NDC for  6 that product was different than the NDC number  7 for the other Ipratropium Bromide products that  8 Roxane sold?  9 A. Yes.  10 Q. Did -- when -- did Roxane report AWP's  11 to Red Book for the Ipratropium Bromide NovaPlus  12 product?  13 MS. RIVERA: Objection. I'm going to  14 object to this as beyond the scope of the  15 deposition testimony and allow Ms. Waterer to  16 answer only to the extent that she has actual  17 knowledge of the answers to these questions and  18 put on the record that she has not been prepared  19 as a corporate representative on these questions.  20 It doesn't necessarily have or is aware of what  21 the corporate knowledge is on these issues.  22 MR. HENDERSON: Counsel, your</p>

30 (Pages 114 to 117)

<p style="text-align: right;">114</p> <p>1 objections have been stated at least four times.</p> <p>2 MS. RIVERA: I understand, but I'm</p> <p>3 going to put it on the record every time that the</p> <p>4 subject comes up.</p> <p>5 MR. HENDERSON: Well --</p> <p>6 MS. RIVERA: That is not -- and if it</p> <p>7 goes too extensive on this and gets into too many</p> <p>8 details, then I will instruct the witness not to</p> <p>9 answer.</p> <p>10 MR. HENDERSON: I respectfully suggest</p> <p>11 that by stating it over and over and over again</p> <p>12 you're wasting time. And you're --</p> <p>13 MS. RIVERA: Well, I don't think I'm</p> <p>14 wasting time.</p> <p>15 MR. HENDERSON: All right.</p> <p>16 BY MR. HENDERSON:</p> <p>17 Q. My question is, Ms. Waterer, do you</p> <p>18 know whether or not Roxane reported AWP's for the</p> <p>19 NovaPlus Ipratropium Bromide product to Red Book?</p> <p>20 A. I don't know specifically what got</p> <p>21 reported to whom and when, no.</p> <p>22 Q. Would it have been Roxane's normal</p>	<p style="text-align: right;">116</p> <p>1 MS. RIVERA: Same objection. Same</p> <p>2 instruction.</p> <p>3 BY MR. HENDERSON:</p> <p>4 Q. What is Novation?</p> <p>5 A. I believe it's a buying group for a</p> <p>6 consortium of hospitals.</p> <p>7 Q. Would it be characterized as a GPO,</p> <p>8 group purchasing organization?</p> <p>9 A. I think that would be fair.</p> <p>10 Q. Do you know their -- how many hospitals</p> <p>11 approximately are members of Novation?</p> <p>12 A. No.</p> <p>13 Q. Does Roxane --</p> <p>14 A. Wait a minute. Am I answering as me or</p> <p>15 as the company?</p> <p>16 Q. Just you.</p> <p>17 A. Just me, no.</p> <p>18 Q. Yeah, this is --</p> <p>19 A. Okay.</p> <p>20 Q. I agree it's outside the scope of the</p> <p>21 30(b)(6) notice.</p> <p>22 Is -- does Roxane sell other products</p>
<p style="text-align: right;">115</p> <p>1 practice to report those AWP's to Red Book?</p> <p>2 MS. RIVERA: Objection. I'm going to</p> <p>3 instruct the witness not to answer. That's</p> <p>4 beyond the scope of this deposition, and you're</p> <p>5 getting into details about a subject that she has</p> <p>6 not been prepared to testify on.</p> <p>7 BY MR. HENDERSON:</p> <p>8 Q. Do you know whether or not the AWP's</p> <p>9 that were reported to Red Book for the</p> <p>10 Ipratropium Bromide NovaPlus were the same as the</p> <p>11 AWP's that Roxane reported for its other</p> <p>12 Ipratropium Bromide, its corresponding</p> <p>13 Ipratropium Bromide generic products?</p> <p>14 MS. RIVERA: Same objection and same</p> <p>15 instruction.</p> <p>16 BY MR. HENDERSON:</p> <p>17 Q. All right. Can you tell me whether or</p> <p>18 not the -- in general whether the prices at which</p> <p>19 the Ipratropium Bromide NovaPlus products were</p> <p>20 sold to Novation were comparable to the prices at</p> <p>21 which Roxane's other Ipratropium Bromide products</p> <p>22 were sold to wholesalers?</p>	<p style="text-align: right;">117</p> <p>1 to Novation under a -- a Novation or a similar</p> <p>2 label?</p> <p>3 A. As me?</p> <p>4 Q. Yes, this is --</p> <p>5 A. To the best of my knowledge, the</p> <p>6 NovaPlus ipratropium was the only private label</p> <p>7 activity that we did with Novation.</p> <p>8 Q. Okay. Could you describe to me -- and</p> <p>9 again, all these questions about Novation and</p> <p>10 NovaPlus are just in your personal capacity and</p> <p>11 outside the scope of the 30(b)(6) notice. Can</p> <p>12 you describe to us what it means to sell a drug</p> <p>13 on a private label?</p> <p>14 MS. RIVERA: Objection. Same objection</p> <p>15 as before and same instruction.</p> <p>16 MR. HENDERSON: All right. Is it your</p> <p>17 intention to make the same instruction and same</p> <p>18 objection as to all other questions that are</p> <p>19 specifically targeted towards the Ipratropium</p> <p>20 Bromide NovaPlus drug?</p> <p>21 MS. RIVERA: Well, yes, for now. I</p> <p>22 would like to hear your questions and then maybe</p>

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<p style="text-align: right;">118</p> <p>1 we can determine after I have a chance to talk to  2 the witness about whether I'm going to allow her  3 to testify and answer those questions.  4 MR. HENDERSON: Okay.  5 MS. RIVERA: And there are some that  6 are so general I don't -- it's okay for her to  7 testify about. But if you get into any of the  8 details about the pricing for NovaPlus or  9 Roxane's specific practices related to NovaPlus,  10 then I will make that objection.  11 BY MR. HENDERSON:  12 Q. Ms. Waterer, did you have any  13 involvement in the decision making concerning  14 selling the -- Roxane's Ipratropium Bromide  15 generic products under a private label to  16 Novation?  17 A. To the best of my recollection, I was  18 involved with implementing the decision. I don't  19 remember if I was involved in -- I don't recall  20 being involved in any of the negotiations or that  21 sort of thing.  22 Q. Were you involved in negotiating the</p>	<p style="text-align: right;">120</p> <p>1 A. I don't know if we decided it, if  2 someone else decided it. I don't recall anything  3 about how the AWP was set.  4 Q. All right. Okay. Now, I'm going to  5 come back to a piece of topic No. 4. And again,  6 this relates to the second piece of it, which is  7 any industry practice concerning changing or not  8 changing the reported or published AWP after the  9 time of launch. And I think you informed me that  10 -- and this, again, I'm now asking you questions  11 in your capacity as a corporate representative.  12 A. Mm-hmm.  13 Q. And I believe, if I recall correctly,  14 you informed me of Roxane's understanding that in  15 general, it's the industry practice not to change  16 the AWP of a generic product after the time of  17 launch. Did I understand you correctly,  18 generally?  19 A. Generally, yes. If it's a generic  20 product with multiple competitors and it's a  21 competitive generic product, yes.  22 Q. Okay. And could you tell me what</p>
<p style="text-align: right;">119</p> <p>1 price or prices at which the products were sold  2 to Novation?  3 A. Not that I recall.  4 Q. Did you have any involvement in  5 determining the AWP's for those products, for the  6 Novation products?  7 A. I'm not sure if I did or didn't. I  8 don't remember how that was determined.  9 Q. At the time, would that have been your  10 normal responsibility?  11 A. Because Novation was a one-time event  12 and it only occurred one time, and to the best of  13 my knowledge, we never did it before or since,  14 there wasn't a normal responsibility associated  15 with it.  16 Q. And I take it you don't recall whether  17 it was your responsibility at the time?  18 A. I'm not sure what your --  19 Q. I'm trying to figure out --  20 A. I don't know who decided what the AWP  21 should be.  22 Q. Okay.</p>	<p style="text-align: right;">121</p> <p>1 specific information informs the company in  2 having that belief?  3 A. That pricing doesn't change --  4 Q. Yes.  5 A. -- on a generic after it launches?  6 Q. Yep.  7 A. I think I've already stated that if the  8 pricing did change and we didn't change ours,  9 eventually it would be brought to our attention  10 most likely by a customer, and we did not  11 commonly see that. It was a rare instance of  12 that. I don't think it was because -- I don't  13 remember exactly how we ended up with a price  14 that was different.  15 Q. Okay.  16 A. But there was no indication that we  17 were doing anything that was different from what  18 the rest of the industry did because nobody  19 highlighted it.  20 Q. You -- in prior questions and answers  21 about the setting of AWP at the time of launch,  22 you described some of your own first-hand</p>